

STATE OF OREGON
OFFICE OF STATE FORESTER

IBLA 83-717

Decided December 12, 1983

Appeal from decision of the Oregon State Office, Bureau of Land Management, dismissing a protest against the placement of the township line between Tps. 1 and 2 S., R. 6 W., Willamette meridian, Group 340, Oregon.

Affirmed.

1. Surveys of Public Lands: Generally -- Surveys of Public Lands:
Dependent Resurveys

In determining whether the original survey corners along a township line were properly reestablished by an official dependent resurvey of public lands, the fact that the measured distance and bearing between the recovered township corners as determined by the resurvey differs somewhat from the measurement and bearing given in the original survey is not sufficient alone to disprove the reestablishment of the intervening corners, as discrepancies between measurements and bearings in old and more recent surveys are not uncommon.

2. Surveys of Public Lands: Dependent Resurveys

Surveys of the United States, after acceptance, are presumed to be correct and after a long lapse of time from the acceptance, will not be disturbed except upon clearest proof of an evident mistake or fraudulent conduct on the part of those charged with the execution of such survey.

3. Surveys of Public Lands: Dependent Resurveys

Where reestablishment of intervening section corners along a township line in a resurvey is supported by substantial evidence, a protest not accompanied by acceptable conflicting evidence but principally by a differing opinion, does not warrant a further survey or investigation of the location of the questioned corners.

4. Surveys of Public Lands: Dependent Resurveys

Where a protestant does not meet his burden of establishing by clear and convincing evidence that a

dependent resurvey is not an accurate retracement and reestablishment of the lines of the original survey, the decision dismissing the protest will be affirmed.

APPEARANCES: Richard A. Morris, Staff Engineer, Forest Management Division, Office of State Forester, Salem, Oregon, for the State of Oregon; Eugene A. Briggs, Esq., Office of the Regional Solicitor, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

In July 1982, Richard A. Morris, Staff Engineer in the Forest Management Division of the Office of the Oregon State Forester, submitted to the Oregon State Office, Bureau of Land Management (BLM), eight specific "cases" which Morris felt were conclusive proof that a dependent resurvey of the township line between Tps. 1 and 2 S., R. 6 W., Willamette meridian, performed by Cadastral Engineer Lynn Roseberry in 1961 and approved February 19, 1963, was erroneous and should be repealed and made void. ^{1/}

By decision of May 4, 1983, BLM set forth the history of the cadastral surveys involved in the township line, and then commented on each of the eight cases proposed by the State.

In case 1, Oregon stated that the position of an original line tree between secs. 32 and 33, T. 1 S., R. 6 W., and a retracement running south showed that the location of the township line should be approximately 625 feet south of the 1961 location. BLM stated its investigation of the remains of the alleged original line tree showed a number of discrepancies so that it could not accept the remaining stump as that of a tree marked by Sharp in his 1893 survey.

In case 2, the State contended the position of an original line tree between secs. 34 and 35, T. 1 S., R. 6 W., and a retracement running south with the topographic calls relating to the Sharp survey of 1893 showed the township line should be 380 feet south of the 1961 line. BLM stated that the topographic calls south of the line tree varied in several respects from that in Sharp's record so that it could not accept the argument of the State.

In case 3, Oregon cited an alleged original line tree between secs. 31 and 32, T. 1 S., R. 6 W., and retracement topographic calls north and south in relation to the original survey calls. Oregon admitted the line tree was of the wrong species, but it asserted that the notches on the tree were similar to those on other line trees and that the topographic calls to the north verified it. It also admitted that the topographic calls to the south were not very good. It contended, however, that the record distance from the tree would put the township line approximately 570 feet south of the 1961 survey. BLM responded that the topographic calls for the S 1/2 of the section

^{1/} We would point out that the protest might have been dismissed at the outset by BLM because it was filed July 14, 1982, almost 20 years after the survey in question had been approved and accepted by BLM. However, as BLM did review the protest very carefully and issued an appealable decision, we will accept the appeal and consider it on its merits.

line would place the township line north of the 1961 location, and commented that the State's arguments seem to select only such items that favor a particular interest. BLM found that Sharp's work on the south boundary of sec. 31 was fairly consistent with the topography and that it was one of Sharp's "more believable lines."

In case 4, Oregon cited the length of the section line between secs. 5 and 6, T. 2 S., R. 6 W., to be 460 feet longer than the Mather survey of 1891. BLM commented that Mather called for a "summit of a mountain being E & W" at a point 27.20 chains south of the township line. BLM stated that the summit is a very prominent feature that cannot be confused with other ridges or spurs. BLM's resurvey found the summit to be 20.20 chains south of the township line. BLM commented that if the Mather record was to be taken at face value, the township line was not too far north, but too far south.

In case 5, Oregon asserted the resurvey found the section line between secs. 3 and 4, T. 2 S., to be 470 feet longer than Brand's 1879 survey. BLM replied that it was not unusual to find wide variations in the numerical values reported by contract surveyors of the period when the township was originally surveyed. BLM explained that in order for such surveyors to be paid, their surveys had to close within the limits required at the time, so accumulated errors in the township were thrown into the last half mile, against the northern boundary. BLM stated that the work of these original surveyors was very poor.

In case 6, Oregon alleged the distance from the quarter corner between secs. 35 and 36, T. 1 S., R. 6 W., to the township line in the 1961 survey was approximately 163 feet shorter than the Sharp 1893 survey. BLM replied that the area in question is now covered by the waters of the Barney Reservoir and that the activities of years past, including timber inventory or blazing of access trails leave marks that, although in the vicinity of the desired line, could not be used as control for reestablishment of section corners.

In case 7, Oregon suggested that ties to the railroad survey stations could be used to reestablish section corners. BLM responded that subdivision corners in T. 2 S., R. 6 W., did not bear directly on the question of the township line as presented.

In case 8, Oregon presented 2 plats which it alleged showed that either by double proportioning or by projecting corner points for secs. 2, 3, 34, and 35, and secs. 4, 5, 32, and 33, the distance north and south of the township line compared more favorably with the original record than by using the 1961 line of Roseberry. BLM responded that the original township line was established by Caudle and Brand in 1879, which was determined to have the bearing of S. 89 degrees 39' W., and the linear measurement was off by slightly more than a chain per mile when compared with the resurvey. BLM stated that the total absence of corner evidence along the township line was an indication that proper marking of the corners did not occur in the course of the original survey.

BLM concluded that the 1961 survey was strictly in accordance with the Manual of Surveying Instructions. BLM asserted that it could not accept the practice of using selected topographic calls while rejecting other equally valid calls as conclusive proof. BLM stated that it could not ignore the demonstrable fact of poor practice by the original surveyors who were very

likely unable to find the Caudle-Brand township line and were only concerned with returning figures that would close their surveys within the limits required.

BLM further stated that the 1961 survey of Roseberry had been an accepted document since its approval on February 19, 1963, and that nothing had been shown to support a charge of gross error. BLM remarked that no protests against the 1961 survey had been received from any land owners who rely on it for control points of their boundaries, nor from the three counties whose boundary lines it controls. BLM dismissed the State's request to have the 1961 Roseberry survey repealed and made void.

The State of Oregon appealed. As to case 1, it argues that discrepancies in the diameter of bearing trees was commonplace in the older surveys, and that trees frequently were old growth forest which might add an inch in diameter in 50 years, and many of the trees grew very little after they were marked. Appellant states the line trees in cases 1 and 2 were shown to two BLM cadastral surveyors and neither was recalled as having doubted the authenticity of the trees. Appellant asserts that marks on the trees discussed in the protest were similar to those on other trees and stumps recovered in T. 1 S., R. 6 W. Appellant still maintains the stump in case 1 relates well to the topographic calls and in relation to the section corner for 28, 29, 32, and 33, and asserts the township line should have been approximately 10 chains south of the Roseberry location. Supplementing the State's argument in case 1 are letters from the county surveyors of Washington County and of Yamhill County.

As to case 2, appellant argues that the fact that the stump is in a group of nearly identical stumps has no relevancy, as the stump in question is the only one notched as a line tree. Appellant argues that the line blazes in T. 1 S., R. 6 W., were made at the time of the Sharp survey because of the similarity to other authenticated evidence found in the township. It claims that relating the notches to work done during construction of Barney Reservoir, three-fourths of a mile away, is absurd, as the blazes were grown over and had to be chopped out, and were on stumps from logging activity in the 1920-1930 era. Oregon alleges it has recovered more than 50 corners in T. 1 S., R. 6 W.

As to case 3, the State agrees that the topographic calls south of the line tree do not fit, but claims that those to the north fit almost precisely to the Sharp record. The State contends that it used only those calls which consistently relate with one another, and it did not use only the calls which strengthened its case. It asserts that one bad call does not negate all the other calls. The State argues retracement of the south boundary of sec. 31, T. 1 S., R. 6 W., by Mather is consistent with the topographical calls and persuades it that the Roseberry township line should be further south. The State can accept that perhaps Sharp made a fictitious retracement of the Mather line to make his work close.

In case 4, the State admits the summit call by Mather is in error, but on the same line the call at 53.00 chains south is a precipitous rock bluff, and at 61.00 chains south is Elkhorn Creek, both of which calls are consistent with each other and with the section corner for secs. 5, 6, 7, and 8 in

T. 2 S., R. 6 W. It contends if the latitude for the section corner 31, 32, 5, and 6, Tps. 1, 2 S., R. 6 W., was determined by a single proportion between the section corner 5, 6, 7, and 8, and the line tree recovered between secs. 31 and 32, the township line would be considerably south of the Roseberry line.

In case 5, the State claims that the elongation of the north tier of sections in T. 2 S., R. 6 W., might be caused by fraud on the part of Caudle and Mather, particularly when the Caudle and Mather distances and topographic calls would agree closely with the Sharp survey distances to the north, if the township line were further south. As to case 6, the State assumes that Caudle and Brand blazed their true lines, especially as Sharp gives a good description in his notes.

As to case 7, the State claims the arguments presented on the subdivisional corners in T. 2 S., R. 6 W., bear directly on the argument that distances to the original corners south of the Roseberry township line are much longer than record, which it claims suggest the Roseberry line is too far north. As to case 8, the State contends it is pure conjecture to infer fraud on the part of the original surveyors. It asserts it is not unreasonable to conclude that all the original corners were destroyed by fire and time. Appellant contends Sharp used established corners when he subdivided T. 1 S., R. 6 W. The State asserts it has found a very good relationship among most of the corners it has found in T. 1 S., R. 6 W., except for those in the western row of sections.

The State urges that there is enough collateral evidence to overrule the single proportion method when evidence of the original survey is missing and compel use of the exception set out in section 5-37 of the Manual of Surveying Instructions. The State speculates that the failure of anyone to protest the Roseberry survey might have been caused because no one cared to protest or had enough data until the State started extending its surveys down from the north. It asserts that time might ripen use lines into property lines, but it does not ripen erroneous surveys into valid surveys. The State further contends that it was gross error for Roseberry not to have searched for collateral evidence north and south of the township line to make sure that the proportionate method he used should have been used. The State again contends it has demonstrated that Roseberry's survey should be voided and the alternate method in section 5-37 of the Manual of Surveying Instructions employed for reestablishment of the township line.

BLM has responded to the State's appeal stating, in part:

This appeal is essentially an attack upon the accuracy of a 20-year-old dependent resurvey. The field work was done in 1961 by Lynn M. Roseberry and the plat of the survey was accepted by the Bureau of Land Management on February 19, 1963.

Appellant cites eight cases, with supporting information, which it is contended places the township boundary southerly of the present monumented location. The effect of the change which the appellant requests would be to add acreage to the Tillamook State Forest and subtract acreage from public land managed by the BLM and from private land adjacent to the state forest.

* * * * *

Roseberry, the BLM surveyor, in 1961 found the original township corners to be extant and in good relationship east and west of each other. No evidence of the original intervening corners could be found and none has since been found. The township line was reestablished by the method of single proportional measurement between the identified township corners to the east and west as prescribed in the 1947 Manual of Surveying Instructions, section 375.

Appellant has observed that it appears that the length of the section lines approaching the established township line from Township 1 South, to the north, are short of the original record, and that the section lines approaching the reestablished line from Township 2 South, to the south, are longer than the original record. He therefore feels the 1961 BLM survey was in error in using the single proportionate measurement and instead should have used the exception in the 1947 Manual that states:

A second exception to the above rule is occasionally important, to be found in those cases where there may be persuasive proof of a deflection in the alignment of the exterior, though the record shows the line to be straight. For example, measurements east and west across a range line, or north and south across a latitudinal township line, counting from a straight-line exterior adjustment, may show distances to the nearest identified subdivisional corners to be materially long in one direction and correspondingly short in the opposite direction. The condition, when supported by corroborative collateral evidence as might generally be expected, would warrant an exception to the straight-line or two-way adjustment under the rules for the acceptance of evidence, e.g. -- the evidence outweighs the record. The Rules for a four-way or double proportionate measurement would then apply here, provided there is conclusive proof.

This is a method that has rarely been used, requires conclusive corroborative factual evidence and an original record that is not in conflict with itself or physical conditions on the ground.

Appellant does not have surveys of record to prove the numerical difference but relies on spot field measurements, map scalings, and portions of preliminary information provided by ongoing BLM surveys inside T. 2 S., R. 6 W. He places great emphasis on several alleged remains of line trees that were reported in the record of the original 1892 survey of T. 1 S., R. 6 W. by Frank H. Sharp. The validity of what he feels are the remains of line trees is open to speculation because of conflicts with the record, extensive logging activity, lack of adjacent original corners, and the ravages of time. The BLM surveyors working under the Manual of Surveying Instructions are required to provide clearer factual evidence. The line tree argument,

however, seems to be a side issue in this case, as their use, if accepted, would be north-south points of control from which to measure. If the line trees are not used the next point of control would be section corners to the north which would produce hardly any different proportionate measurements if appellant's facts are correct.

Topographic interpretation is reserved to himself by appellant, who decides when the original surveyor spoke in error or correctly. * * * The topographic calls selected by appellant place his desired township line exactly record distance south of a point of control which he has chosen.

All of this ignores the fact that the subject township line was executed by a different team of surveyors, Caudle and Brand, in 1879. They began at the easterly township corner, ran 6 miles west by their measurement, and established the westerly township corner. The two township corners are still in existence. The relationship between the two corners is very good for an east-west bearing, even by today's standards. To say now that the original intervening corners were placed radically out of line in a sawtooth pattern and yet end up with the opposite township corner nearly exactly west of the starting point is not consistent.

What is obvious is that the Sharp survey of the interior of T. 1 S., R. 6 W., has marked irregularities in bearings and distances, although his record says everything is perfectly regular. It has been pointed out that the work of the contract surveyors for the subdivisional lines of the two townships had to close mathematically against the work of earlier surveyors or their contract would not be paid. If they could not close, the alternative was to resurvey the former work and identify the errors. For this effort they would not be compensated. Or they could introduce false figures for their own work that would close against the older surveys.

This "bookkeeping" arrangement is conspicuous where J. E. Mather is completing the surveys of T. 2 S., R. 6 W., and must close the westerly two tiers of the township against the work to the east. There is an excess, so far as the record is concerned, in the west boundary of the township. Numerically, the westerly township corner, also the westerly township corner of the line in question, is too far north of the former work to the east. Mather must either resurvey many, many miles of the former work to the east at his own expense, or resurvey 1 mile of the township line east of the township corner, on paper, to produce a figure that will close his work against the older record to the east. Thus we see his bearing of S. 83 degrees 09' E., along the north boundary of section 6 which, in effect, shows the corner of sections 5, 6, 31 and 32 to be about 10 chains south of the township corner.

A short time later, Sharp is surveying the subdivisions of T. 1 S., R. 6 W. He must also close his work against the older

township line we are concerned with. He obviously cannot close his township with the Mather record showing 10 chains of deflection. He resurveys the north boundary of section 6 again, and, lo and behold, it is within a few minutes of the original record. * * *

In this instance, appellant prefers to adopt the Mather record with its 10 chains benefit of southerly adjustment, albeit in conflict with the topographic facts, and reject the double Sharp record from the west and the north that places the original corner very nearly where the 1961 BLM survey has it.

The interpretive and factual irregularities in this protest and the lack of supporting conclusive collateral evidence of deflection in the survey of the original township line demonstrates the correctness of the reestablished line. The 1961 dependent resurvey, as approved and filed in 1963, was conducted in accordance with the rules of surveying in force at that time, as set forth in the * * * Manual of Surveying Instructions * * * (1947). The arguments and data submitted in the protest do not constitute clear and convincing evidence that the 1961 resurvey was not an accurate retracement and reestablishment of the original township line between Tps. 1 and 2 S., R. 6 W. It has long been established by the Department that surveys of the United States, after acceptance, are presumed to be correct, and will not be disturbed, except upon clear proof that they are fraudulent or grossly erroneous. Grayce R. Liler, A-27370 (December 19, 1956); Ralph L. Bassett, Edwin J. Keyser, A-27372 (May 20, 1957); Ralph E. May, C. S. McGhee, A-29014 (January 30, 1962).

In summary, the 1961 dependent resurvey was properly conducted and the evidence submitted by appellant is weak and inconclusive.

We note that the 1961 survey by Roseberry started at the southeastern corner of T. 1 S., R. 6 W., at the monument established by the Oregon State Forester and, running the course returned in the Caudle and Brand survey in 1879, namely, S. 89 degrees 39' W., arrived at the monumented southwestern corner of the township, with very little variance in the course and only 4.54 chains longer than the distance returned by Mather in 1891.

[1] As the Board held in Alfred Steinhauer, 1 IBLA 167 (1970):

In determining whether the original surveyed quarter corner was properly reestablished by an official dependent resurvey of public lands, the fact that the measured distance and bearing between the quarter corner and the adjacent section corners as determined by the resurvey differs somewhat from the measurement and bearing given by the original survey is not sufficient alone to disprove the reestablishment of the corner, as discrepancies between measurements and bearings in old and more recent surveys are not uncommon.

[2] Surveys of the United States, after acceptance, are presumed to be correct and, after a long lapse of time from the acceptance, will not be disturbed except upon clearest proof of an evident mistake or fraudulent conduct on the part of those charged with the execution of such survey. Robert J. Wickenden, 73 IBLA 394 (1983); Paul N. Scherbel, 58 IBLA 52 (1981); Henry O. Woodruff, 24 IBLA 190 (1976); Nina R. B. Levinson, 1 IBLA 252 (1971); State of Louisiana, 60 I.D. 129 (1948); George S. Whitaker, 32 L.D. 329 (1903).

[3] Where the reestablishment of a surveyed township line in a dependent resurvey is supported by substantial evidence, a protest not accompanied by acceptable conflicting evidence does not warrant a further survey or investigation of the line. Robert J. Wickenden, *supra*; *cf.* O. R. Williams, 60 I.D. 301 (1949) (protest of dependent resurvey accompanied by affidavits of conflicting evidence does not necessarily warrant a further survey or investigation of the corner).

[4] In challenging the Government resurvey, the appellant has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey. Bethel C. Vernon, 37 IBLA 226 (1978). Where a protestant does not meet his burden of establishing by clear and convincing evidence that a dependent resurvey is not an accurate retracement and reestablishment of the lines of the original survey, the decision dismissing his protest against the survey will be affirmed. Bethel C. Vernon, 47 IBLA 315 (1980).

We have reviewed the material submitted by appellant with the appeal, and while it established that there is a difference of opinion between qualified surveyors, it falls short of the clear and convincing evidence that would be necessary to conclude that the subject resurvey is not accurate. BLM correctly dismissed the protest.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

ADMINISTRATIVE JUDGE HARRIS CONCURRING:

In this case BLM conducted a dependent resurvey in 1961. That survey was accepted in 1963. More than 20 years following the completion of the fieldwork for that survey, a staff engineer in the Forest Management Division of the Office of the Oregon State Forester filed objections to that survey requesting that the township line between Tps. 1 and 2 S., R. 6 W., Willamette meridian be "repealed and made void." The staff engineer cited various information which he contended placed the township boundary southerly of its monumented location. The reason behind the request was that if the staff engineer's contentions were accepted, acreage would be added to a state forest and subtracted from public lands and certain private lands adjacent to the state forest.

I am unaware of any specific time limit for filing objections to official government surveys. Certainly, in order to mount any meaningful challenge to a survey much careful study and time consuming fieldwork must take place. However, it would appear that 20 years was an unreasonably long time to wait to request the voiding of the township line involved in this case. As pointed out by BLM in its May 4, 1983, decision on the request: "It [the survey] has not been protested by other land owners who rely on it for control of their boundaries and it is also controlling on three different county boundaries" (Decision at 8).

In addition, in this case the staff engineer stated in his request under the heading "Case 6":

The distance from the found original one quarter corner to Sections 35 and 36, T1S, R6W, to the 1961 township line is approximately 163' shorter than Sharp's 1892 survey. I retraced South from this one quarter corner on April 25, 1955 40 chains and didn't find Section corner 35, 36, 1 & 2, but when we ran east from our point 40 chains South, we found original line blazes on some cedars which have been destroyed by the Hillsboro Dam site. Also, the topography calls to creek to South and East fit close to 40 chains South point. [Emphasis added.]

Thus, in that particular instance the staff engineer was relying on information gathered prior to the BLM survey. BLM's response was, and the staff engineer admitted, that the cited evidence was now "covered or destroyed by the waters of Barney Reservoir."

The record contains little explanation of the reason for the long delay involved in filing the objections. The staff engineer merely states in his July 14, 1982, request, "We finally have our information gathered to dispute the dependent resurvey of the township line." On appeal he states, "Probably no one has cared or had enough data to protest until we started extending our surveys down from the North." I believe that, as indicated in footnote 1 of the main opinion, BLM could have dismissed the request in this case as having been untimely filed, especially in the circumstances herein where the survey controls the boundaries of other land owners who have not objected.

On the other hand, I think that BLM properly undertook to investigate the allegations in this case, since the staff engineer had cited substantial evidence in support thereof. BLM sought to determine whether, in fact, the township line had been erroneously reestablished.

BLM's decision in this case reflects that it meticulously examined and analyzed all of the contentions. It appears that the staff engineer used selective information to support his position, while complete analysis of the available information supports BLM's location of the township line by single proportionate measurement. Thus, while the staff engineer has some evidence to support his position, I must agree with the main opinion that he failed to provide clear and convincing evidence that the survey was in error as to the township line in question.

Bruce R. Harris
Administrative Judge

